Volume 21 | Number 16 Article 2

8-13-2010

Cases, Regulations and Statutes

Robert P. Achenbach Jr
Iowa State University

the details of how that would be done with multiple marriages is not clear); index amounts for inflation; increase the special use valuation[6] allowance from the present level to $3.5 million for 2009 and 2010; and repeal the family-owned business deduction recapture rules.[7]

The Sensible Estate Tax Act of 2009

This bill, H.R. 2023, authored by Rep. McDermott of Washington State, would set the applicable exclusion amount at $2,000,000 per decedent ($4,000,000 for a decedent and spouse) on an inflation-adjusted basis; authorize "portability" of the applicable exclusion amount; set the federal estate tax rate at 45 percent, rising to 50 percent over $5,000,000 of taxable estate and 55 percent over $10,000,000 of taxable estate; and restore the credit for state death tax.

The Certain Estate Tax Relief Act of 2009

This proposal, H.R. 436, also authored by Rep. Pomeroy of North Dakota, would set the applicable exclusion amount ($3,500,000) and rate (45 percent) at the 2009 levels; re-unify the estate and gift taxes; and impose limitations on some types of discounting in valuing assets. The bill would set valuation rules for "non-business" assets with no discount allowed except for hedges, real property used in the active conduct of one or more trades or businesses where there is material participation under the passive activity loss rules[8] and working capital reasonably required for a trade or business. The proposal would also bar discounts for non-actively traded interests in entities if the transferee and members of the family[9] have control of the entity.

The Estate Tax Relief Bill of 2009

This bill, H.R. 3905, was introduced by four members of the House of Representatives late in 2009 on a bi-partisan basis. The proposal would increase, gradually, the applicable exclusion amount from $3,500,000 to $5,000,000 by 2019 and index the amounts for inflation. The bill would also reduce the rate from 45 percent to 35 percent over the same 10-year period.

The Responsible Estate Tax Act of 2010

This proposal, S. 3533, introduced by Sen. Sanders and others, would leave the applicable exclusion amount at $3,500,000, would impose limits on discounts and place a 10-year minimum term on grantor retained annuity trusts. The bill would set the federal estate tax rate at 45 percent up to $10 million of taxable estate, rising to 50 percent for taxable estates of $10 million to $50 million and 55 percent over $50 million of taxable estate. A 10 percent surtax (making the top rate 65 percent) would be imposed on taxable estates over $500,000,000. The proposal would also raise the special use valuation limit from its present level (inflation adjusted to $1,000,000 for deaths in 2010) to $3,000,000.

So what is the political landscape on this issue?

Without much question, the federal budget deficit is providing buoyancy to those arguing for continuation of the transfer taxes and providing support for those urging higher rates for upper tax bracket estates. The outcome, however, will be a compromise and in all likelihood will not embrace any of the proposals in their entirety.

ENDNOTES

1 See EGTRRA of 2001, Pub. L. No. 107-16, 115 Stat. 38 (2001).

2 *Id.*

3 *Id.*

4 *Id.* See Harl, "Income Tax Basis for decedents Dying in 2010," 21 *Agric. L. Dig.* 81 (2010).

5 EGTRRA of 2001, Pub. L. No. 107-16, 115 Stat. 38 (2001).

6 I.R.C. § 2032A.

7 I.R.C. § 2057, repealed by EGTRRA of 2001, Pub. L. No. 107-16, § 521(d), 115 Stat. 38 (2001), but with recapture rules remaining intact.

8 I.R.C. § 469(c)(7)(C).

9 I.R.C. § 2032A(e)(2).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

FEDERAL TAX

AUTOMATIC STAY. The debtor had filed an action the Tax Court and reached a settlement with the IRS on March 22, 2005. Two days later, the debtor filed for Chapter 7. The Tax Court entered a stipulated decision on April 12, 2005, after the filing of the bankruptcy petition. The Tax Court held that the decision was voided by operation of the automatic stay in the bankruptcy case and vacated the stipulated decision. **Shutts v. Comm'r, T.C. Memo. 2010-160**.

DISCHARGE. The debtor filed for Chapter 13 on October 4, 2007 and the IRS filed claims for 2002 and 2003 unpaid taxes based on a Tax Court ruling in May 2007 and assessments made in August 2007. The debtor sought to have the taxes declared dischargeable under Section 523(a)(1)(A). Although the IRS issed a Notice of Deficiency in 2005, the debtor challenged the notice by appealing to the Tax Court, prohibiting any assessment until conclusion of the Tax Court case. The IRS made the assessments in 2007 after the conclusion of the Tax court case and within 240 days before the filing of the bankruptcy petition. The court held that the taxes were non-dischargeable under Section 523(a)(1)(A). **Maali v. United States, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,528 (Bankr. 1st Cir. 2010)**.

REFUND. The debtor filed for Chapter 7 on September 25, 2007. At that date, the debtor had earned approximately 78 percent of the gross income for 2007. The debtor filed the 2007 tax return claiming a refund. The trustee sought turnover to the estate of 73 percent of the refund as estate property, based on the percentage of days in the tax year which proceeded the bankruptcy filing. The court approved the allocation method because the taxpayer's income advanced at a steady pace throughout the tax year. ***In re* Meyers, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,540 (7th Cir. 2010)**.

TRANSFEREE LIABILITY. When the debtor filed for Chapter 7, the debtor had a pending employment discrimination lawsuit against a former employer. A settlement was reached and the employer paid the settlement proceeds to the bankruptcy trustee. The bankruptcy estate did not file for or pay federal income taxes and distributed the settlement proceeds, less bankruptcy claims, to the debtor. The IRS assessed taxes against the bankruptcy estate and sought recovery from the debtor since the bankruptcy estate had no assets after the case was closed. The court held that, because the distributions to the debtor from the estate caused the estate to become insolvent, the distributions were fraudulent conveyances under state law and the debtor was liable for the taxes on the distributions. **Jeffries v. Comm'r, T.C. Memo. 2010-172**.

FEDERAL FARM PROGRAMS

CONSERVATION. The NRCS has issued a series of revised conservation practice standards in the National Handbook of Conservation Practices. These standards include: Channel Bed Stabilization (Code 584), Dust Control From Animal Activity on Open Lot Surfaces (Code 375), Karst Sinkhole Treatment (Code 527), Lined Waterway or Outlet (Code 468), Monitoring Well (Code 353), On-Farm Equipment Efficiency Improvement (Code 374), Pond Sealing or Lining--Bentonite Treatment (Code 521C), Pond Sealing or Lining--Compacted Clay Treatment (Code 521D), Pond Sealing or Lining--Soil Dispersant Treatment (Code 521B), Salinity and Sodic Soil Management (Code 610), Stream Habitat Improvement and Management (Code 395), Vertical Drain (Code 630), Water Well (Code 642), Water Well Decommissioning (Code 351), and Well Water Testing (Code 355). NRCS State Conservationists who choose to adopt these practices for use within their states will incorporate them into Section IV of their respective electronic Field Office Technical Guides. These practices may be used in conservation systems that treat highly erodible land or on land determined to be a wetland. **75 Fed. Reg. 46903 (Aug. 4, 2010)**.

CONSERVATION RESERVE PROGRAM. The CCC has issued interim regulations amending the Conservation Reserve Program (CRP) regulations to implement provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The 2008 Farm Bill generally extends the existing CRP through 2012 with some changes in eligibility requirements. The changes in this rule include adding alfalfa to the definition of agricultural commodity for the purposes of determining cropping history, adding incentives for limited resource farmers and Indian tribes, adding pollinator habitat incentives, adding a provision allowing preference for local residents in accepting competitive offers, adding an additional waiver provision to exclude certain acreage for CRP county acreage maximums, and clarifying the limited harvesting and grazing activities that may be allowed on CRP land. **75 Fed. Reg. 44067 (July 28, 2010)**.

CROP INSURANCE. The FCIC has adopted as final amendments to the Common Crop Insurance Regulations by removing the Plum Crop Insurance Provisions and providing for coverage of plums under the Stonefruit Crop Insurance Provisions. The changes will be effective for the 2011 and succeeding crop years. **75 Fed, Reg. 44718 (July 29, 2010)**.

FARM CREDIT. The FCA has adopted as final regulations to implement the Secure and Fair Enforcement for Mortgage Licensing Act (the S.A.F.E. Act). The S.A.F.E. Act requires an employee of a Farm Credit System institution and certain of their subsidiaries that are regulated by a federal banking agency or the FCA who acts as a residential mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry, obtain a unique identifier, and maintain this registration. The final regulation further provides that FCA institutions must: require their employees who act as residential mortgage loan originators to comply with the S.A.F.E. Act's requirements to register and obtain a unique identifier, and adopt and follow written policies and procedures designed to assure compliance with these requirements. **75 Fed. Reg. 44655 (July 28, 2010)**.

IMPORTS. The APHIS has issued proposed regulations to establish definitions for the terms "common cultivar" and "common food crop" under the Lacey Act, 16 U.S.C. 3371 et seq., which governs importation of wildlife, fish and plants. The 2008 amendments to the Lacey Act expanded its protections to a broader range of plant species, extended its reach to encompass products, including timber, that derive from illegally harvested plants, and required that importers submit a declaration at the time of importation for certain plants and plant products. Common cultivars and common food crops are among the categorical exemptions to the provisions of the Act. The Lacey Act does not define the terms "common cultivar" and "common food crop" but instead gives authority to the U.S.D.A. and the U.S. Department of the Interior to define these terms by regulation. The proposed definitions would specify which plants and plant products will be subject to the provisions of the Lacey Act, including the declaration requirement. **75 Fed. Reg. 46859 (Aug. 4, 2010)**.

PACKERS AND STOCKYARDS ACT. The GIPSA has extended the comment period on the following proposed regulations. The GIPSA has issued proposed regulations amending the regulations under the Packers and Stockyards Act, 1921, describing and clarifying conduct that violates the P&S Act, including (1) eight examples of conduct deemed unfair;

(2) clarification of when certain conduct in the livestock and poultry industries represents the making or giving of an undue or unreasonable preference or advantage or subjects a person or locality to an undue or unreasonable prejudice or disadvantage; (3) whether a live poultry dealer has provided reasonable notice to poultry growers of a suspension of the delivery of birds under a poultry growing arrangement; (4) when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of the P&S Act; and (5) whether a packer, swine contractor or live poultry dealer has provided a reasonable period of time for a grower or a swine producer to remedy a breach of contract that could lead to termination of the growing arrangement or production contract. *75 Fed. Reg. 35338 (June 22, 2010)*. **75 Fed. Reg. 44163 (July 28, 2010)**.

VEGETABLES. The AMS is soliciting comments on the possible revisions to eighteen U.S. grade standards for frozen vegetables issued on or before July 22, 1985. The AMS is considering replacing the two term system with a single term to describe each quality level for the grade standards identified in this notice. The term using the letter grade would be retained, and the descriptive term would be eliminated. For example, grade standards using the term "U.S. Grade A" or "U.S. Fancy" would be revised to use the single term "U.S. Grade A" and the terms "U.S. Grade B" or "U.S. Extra Standard" would be revised to use the single term "U.S. Grade B." **75 Fed. Reg. 43141 (July 23, 2010)**.

FEDERAL ESTATE AND GIFT TAXATION

BENEFICIARY LIABILITY. The decedent's will provided for a bequest of a portion of real property to two step-children; however, the decedent transferred the property to two other children shortly before death. The step-children challenged the pre-death transfer and the parties reached a settlement under which the estate paid money to the beneficiaries, including payment of attorneys' fees. The estate claimed a deduction for the settlement proceeds but the IRS disallowed the deduction and made an assessment. After the estate did not pay the assessed taxes, the IRS sought recovery from the beneficiaries. The court held that the beneficiaries were liable for the taxes resulting from the disallowed deduction because the beneficiaries received the funds. The attorneys' fees were included, even though they were paid directly to the attorneys by the estate, because the payment was considered a constructive payment to the beneficiaries. **Upchurch v. Comm'r, T.C. Memo. 2010-169**.

FEDERAL INCOME TAXATION

CAPITAL COSTS. The taxpayer manufactured a product which it sold through unrelated and taxpayer owned or licensed retail outlets. The taxpayer sought a ruling whether the costs of cardboard boxes, dividers and other packaging materials needed to be capitalized as handling costs or whether the costs could be currently deducted as "pick and pack" expenses. The IRS ruled that, because the products were shipped under general supply requirements for the retailers and not for specific orders of individual products. **Ltr. Rul. 201030025, Feb. 18, 2010**.

CHARITABLE DEDUCTION. The taxpayers, husband and wife, owned a residential property which they intended to demolish in the intention to build a new residence on the land. The taxpayers donated the building to the local fire department for use in training firefighters, during which the structure would be demolished. The taxpayers obtained an appraisal of the property and claimed a charitable deduction based on that appraisal. The court upheld the IRS disallowance of the deduction on the basis that the appraisal did not satisfy the requirements of I.R.C. § 170(f)(11) in that the appraisal did not include the date of intended contribution, the terms of the agreement between the taxpayers and the fire department, the appraiser's qualification and a statement that the appraisal was made for income tax purposes. The court also noted that the appraisal did not identify and value any goods or services received by the taxpayers in exchange for the contribution. **Hendrix v. United States, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,541 (S.D. Ohio 2010)**.

DEPRECIATION. The court held that street lights, including their poles, light fixtures, brackets and mounting equipment, were depreciable as seven-year property, under *Rev. Proc. 87-56, 1987-2 C.B. 674* as property without a class life. The court rejected the IRS classification as class 49.14, Electric Utility Transmission and Distribution Plant, (20-year recovery period) because the lights were not used in the distribution of electricity for sale. The court also rejected the IRS classification as class 00.3, Land Improvements (15-year recovery) because the light fixtures were not permanently affixed to the land. **PPL Corp. & Subs. v. Comm'r, 135 T.C. No. 8 (2010)**.

DISASTER LOSSES. On July 10, 2010, the President determined that certain areas in Montana are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a severe storms and flooding, which began on June 15, 2010. **FEMA-1922-DR.** On July 14, 2010, the President determined that certain areas in Wyoming are eligible for assistance from the government under the Act as a result of flooding which began on June 4, 2010. **FEMA-1923-DR.** On July 15, 2010, the President determined that certain areas in Nebraska are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on June 1, 2010. **FEMA-1924-DR.** On July 23, 2010, the President determined that certain areas in Kentucky are eligible for assistance from the government under the Act as a result of severe storms and flooding which began on July 17, 2010. **FEMA-1925-DR.** On July 26, 2010, the President determined that certain areas in Oklahoma are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on June 13, 2010. **FEMA-1926-DR.** On July 27, 2010, the President determined that certain areas in Iowa are eligible for assistance from the government under the Act as a result of severe storms and flooding which began on May 12, 2010. **FEMA-1928-DR.** On July 29, 2010, the President determined that certain areas in South Dakota are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on June 16, 2010. **FEMA-1929-DR.** On July 29 2010, the President determined that certain areas in Iowa are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on June 1, 2010. **FEMA-1930-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2009 federal income tax returns. See I.R.C. § 165(i).

EMPLOYEE BENEFITS. The IRS has issued guidance on the availability of special funding rules for single-employer defined benefit plans under I.R.C. § 430(c)(2)(D), as added by section 201(b)(1) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, Pub. L. No.111-192, for a plan year for which the Form 5500 (and Schedule SB) has been filed. The notice also describes anticipated future guidance that will apply for sponsors of single-employer defined benefit pension plans with respect to an election to use these special funding rules. **Notice 2010-55, I.R.B. 2010-33**.

The IRS has issued guidance on the availability of special funding rules for multiemployer defined benefit plans under I.R.C. § 431(b)(8), as added by section 211(a)(2) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, Pub. L. No. 111-192, for a plan year for which the Form 5500 (and Schedule MB) has been filed. The notice also describes anticipated future guidance that will apply for sponsors of multiemployer defined benefit pension plans with respect to the special funding rules under I.R.C. § 431(b)(8). **Notice 2010-56, I.R.B. 2010-33**

The taxpayer was an I.R.C. § 170(b)(1)(A)(ii) educational organization which provided tuition reduction programs for various employees. The IRS ruled that programs satisfied the reasonable classification of employees test and satisfied the prohibition against discrimination in favor of highly compensated employees. **Ltr. Rul. 201029003, April 15, 2010**.

EXPENSE METHOD DEPRECIATION. The taxpayers acquired a truck under a contract titled "motor Vehicle Leae Agreement." The contract term was for 48 months, with monthly payments, and required the taxpayers to carry insurance and maintain the truck. The contract limited the number of miles driven during the contract. The taxpayers were entitled to purchase the truck at the end of the contract for a predetermined amount. The court held that the contract was a lease and that the taxpayers were not entitled to claim expense method depreciation for the payments under the contract. **Boyce v. Comm'r, T.C. Summary Op. 2010-100**.

HOBBY LOSSES. The taxpayer carried on a horse training activity over several years in which the activity consistently had tax losses. The court held that the losses were not deductible because the taxpayer did not carry on the activity with the intent to make a profit. The factors in support of the holding were (1) the taxpayer did not maintain sufficient records to properly analyze the profit potential of the activity and did not make adjustments in the activity in order to make a profit; (2) although the taxpayer obtained expert advice as to the training of horses, the taxpayer did not seek expert advice in how to make the activity profitable; (3) although the taxpayer spent a substantial amount of time on the activity, much of that time was for personal recreation; (4) the taxpayer had no history of successful business activities; and (5) the taxpayer suffered only losses from the activity. **Betts v. Comm'r, T.C. Memo. 2010-164**.

IDENTITY THEFT. The IRS has published 10 things taxpayers need to know about identity theft. (1) The IRS does not initiate contact with a taxpayer by e-mail. (2) If a taxpayer receives a scam e-mail claiming to be from the IRS, forward it to the IRS at phishing@irs.gov. (3) Identity thieves get personal information by many different means, including: stealing a wallet or purse, posing as someone who needs information about a taxpayer through a phone call or e-mail, looking through a taxpayer's trash for personal information, and accessing information a taxpayer provides to an unsecured internet site. (4) If a taxpayer discovers a web site that claims to be the IRS but does not begin with 'www.irs.gov', taxpayers should forward that link to the IRS at phishing@irs.gov. (5) To learn how to identify a secure web site, visit the Federal Trade Commission at www.onguardonline.gov/tools/recognize-secure-site-using-ssl.aspx. (6) If a taxpayer's Social Security number is stolen, another individual may use it to get a job. That person's employer may report income earned by them to the IRS using the taxpayer's Social Security number, thus making it appear that the taxpayer did not report all of the taxpayer's income on the taxpayer's tax return. (7) A taxpayer's identity may have been stolen if a letter from the IRS indicates more than one tax return was filed for the taxpayer or the letter states the taxpayer received wages from an employer the taxpayer does not know. If a taxpayer receives such a letter from the IRS, leading the taxpayer to believe the taxpayer's identity has been stolen, respond immediately to the name, address or phone number on the IRS notice. (8) If a taxpayer's tax records are not currently affected by identity theft, but a taxpayer believes the taxpayer may be at risk due to a lost wallet, questionable credit card activity, or credit report, the taxpayer needs to provide the IRS with proof of identity. A taxpayer should submit a copy of a valid government-issued identification – such as a Social Security card, driver's license, or passport – along with a copy of a police report and/or a completed Form 14039, Identity Theft Affidavit. As an option, a taxpayer can also contact the IRS Identity Protection Specialized Unit, toll-free at 800-908-4490. A taxpayer should also follow FTC guidance for reporting identity theft at www.ftc.gov/idtheft. (9) Show the taxpayers Social Security card to the taxpayer's employer when the taxpayer starts a job or to the taxpayer's financial institution for tax reporting purposes. Do not routinely carry the Social Security card or other documents that display the taxpayer's Social Security number. (10) For more information about identity theft – including information about how to report identity theft, phishing and related fraudulent activity – visit the IRS Identity Theft and Your Tax Records Page, found by searching "Identity Theft" on the www.IRS.gov home page. **IRS Summertime Tax tips 2010-11**.

INNOCENT SPOUSE RELIEF. Although the IRS had agreed that the taxpayer was entitled to innocent spouse relief for taxes unpaid during marriage, the taxpayer's former spouse objected as intervenor in the case, requiring a court ruling. The court held that innocent spouse relief was proper because (1) the taxpayer was divorce, (2) the taxes resulted from a business operated solely by the former spouse, (3) the taxpayer received no benefit from the business, (4) the taxpayer had made a good faith attempt to comply with tax laws, and (5) payment of the taxes would subject the taxpayer to financial hardship. **Downs v. Comm'r, T.C. Memo. 2010-165**.

The taxpayer and spouse filed joint income tax returns in which the spouse failed to report distributions from a retirement account without the taxpayer's knowledge. The taxpayer sought innocent spouse tax relief for the unpaid taxes. The court held that the taxpayer was not entitled to innocent spouse relief because (1) the taxpayer remained married to the spouse and continued to file joint returns, (2) the taxpayer provided no evidence of financial hardship, (3) the taxpayer had reason to know about the retirement account distributions, (4) the tax liability was a joint obligation and (5) the taxpayer failed to provide any evidence that the taxpayer did not receive any benefit from the distributions. **Smolen v. Comm'r, T.C. Summary Op. 2010-106**.

IRA. The taxpayer, who had not yet attained the age of 59 1/2, had been receiving substantially equal periodic payments from an IRA. As part of a divorce judgment, the taxpayer was required to transfer a portion of the IRA to the former spouse. The transfer resulted in a reduction of the periodic payments to the taxpayer. The IRS ruled that the division of the IRA was a nontaxable transfer under I.R.C. § 408(d)(6) and the reduction in periodic payments did not constitute a modification that would result in imposition of the 10 percent penalty under I.R.C. § 72(t)(1). **Ltr. Rul. 201030038, May 5, 2010**.

INTEREST FROM GOVERNMENTAL OBLIGATIONS. The taxpayers received money from a settlement with a state for a condemnation award from property owned through several partnerships. The award was paid with interest over five years. The taxpayers excluded the interest under I.R.C. § 103 as interest earned on a governmental obligation. The court held that the interest was not eligible for Section 103 non-taxable treatment because the interest was not paid by the state on obligations issued under the state's borrowing authority. **DeNaples v. Comm'r, T.C. Memo. 2010-171**.

INVESTMENT INTEREST. The taxpayers used a tax return preparer to prepare their income tax returns. For the tax years involved, the taxpayers had investment income in excess of investment interest expenses and provided the preparer with full documentation. In filing the returns the preparer failed to file Form 4852, Investment Interest Expense Deduction, and make the election to treat qualified dividends or net capital gain from the disposition of investment property as investment income. The error was discovered by another tax return preparer and the taxpayers sought an extension of time to file the election. The IRS granted the extension. **Ltr. Rul. 20102912, April 19, 2010**.

LIMITED LIABILITY COMPANIES. The taxpayer was a limited liability company with an individual named as the tax matters partner. The individual died and the LLC property passed to a trust. The LLC member partnerships designated the trustee as the tax matters partner. In a Field Attorney Advice letter, the IRS ruled that the trustee could be the tax matters partner if the trust was a general partner in each of the member partnerships. If the trust is not a general partner in the member partnerships, the default tax matters partner of the LLC would be the general partner with the largest profit interest in the LLC. **FAA 20103001F, Aug. 3, 2010**.

NONCONVENTIONAL FUEL SOURCE CREDIT. The taxpayers sought the advice of an income tax return preparer who advised then to claim fictitious I.R.C. § 45K credits. The taxpayers did not own any interest in a landfill and did not produce any alternative fuels. Although the court acknowledged that the taxpayers were the victims of a tax scam operation, the court held that the taxpayers were not entitled to the credit. **Xiang v. Comm'r, T.C. Summary Op. 2010-105**.

NONPROFIT ORGANIZATIONS. The IRS has announced that small nonprofit organizations at risk of losing their tax-exempt status because they failed to file required returns for 2007, 2008 and 2009 can preserve their status by filing returns by Oct. 15, 2010, under a one-time relief program. **IR-2010-87**.

PARTNERSHIPS

DEFINITION. The taxpayers were father and son and they operated several farming activities on several parcels of land, some contributed by the father and some jointly purchased by both. The court held that the taxpayers operated the farm as an equal partnership and the farm was taxable as a partnership because (1) both parties contributed capital and services, (2) they agreed to and did split the gross income from all sales, (3) both parties had equal access to the operation's accounts, (4) both parties had a proprietary interest in farm profits, although the interest in losses was not clear, (5) the name of the operation did not clearly indicate the nature of the business entity, (6) the parties held themselves out as a partnership in obtaining insurance and filings with the state, and (7) both parties exercised control over the farm's operations. **Holdner v. Comm'r, T.C. Memo. 2010-175**.

PASSIVE ACTIVITY LOSSES. A complex trust owned an interest in a partnership which wholly-owned a second entity which owns property. The IRS ruled the trust may materially participate in the second entity's activities if the trustee is involved in the operations of the second entity's activities on a regular, continuous, and substantial basis. Note: The ruling is consistent with *TAM 200733023, Aug. 17, 2007* but contrary to *Mattie K. Carter Trust v. United States, 256 F. Supp. 2d 536 (N.D. Tex. 2003)*. See Harl, "IRS Reasserts Its Position on Material Participation By Trusts," 18 *Agric. L. Dig.* 137 (2007). **Ltr. Rul. 201029014, April 7, 2010**.

PASSIVE INVESTMENT LOSSES. The taxpayers, husband and wife, represented that they were in the real property business and qualified for the election to treat all interests in rental real property as one business. However, the taxpayers inadvertently failed to file the statement required by Treas. Reg. § 1.469-9(g)(3) with their tax return. The IRS granted an extension of time to file the statement for the election. **Ltr. Rul. 201029004, April 7, 2010**.

PENALTIES. The taxpayers invested in Hoyt Farm cattle partnerships for which loss deductions were disallowed under stipulations by the partnerships. The taxpayers were assessed substantial understatement of tax penalties for the years of the disallowed carry-through losses. The taxpayers argued that they reasonably believed the deductions were legitimate but the court held that the taxpayers failed to seek the advice of tax professionals; therefore, they did not have reasonable cause to believe the deductions were legitimate. The taxpayers also argued that the penalties were barred by the statute of limitations, but the court held that the assessment period was tolled by the proceedings against the partnership. **Drown v. Comm'r, T.C. Memo. 2010-163**.

PENSION PLANS. For plans beginning in August 2010 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 4.33 percent, the corporate bond weighted average is 6.28 percent, and the 90 percent to 100 percent permissible range is 5.65 percent to 6.28 percent. **Notice 2010-57, I.R.B. 2010-34**.

REFUNDS. The IRS has announced that, starting with next year's tax filing season, it will no longer provide tax preparers and associated financial institutions with the "debt indicator," which is used to facilitate refund anticipation loans (RALs). The IRS announced that it would study refund settlement products. RALs are loans secured by a taxpayer's anticipated tax refund. Currently, tax preparers who electronically submit a client's tax return receive in the acknowledgment file an indication of whether an individual taxpayer will have any portion of the refund offset for delinquent tax or other debts, such as unpaid child support or delinquent federally funded student loans. This acknowledgment is known as the debt indicator, and is used as an underwriting tool for RALs. In a related effort, the IRS plans to explore the possibility of providing a new tool for the 2012 tax filing season to give taxpayers a mechanism to use an appropriate portion of their tax refund to pay for the services of a professional tax return preparer. **IR-2010-089**.

The IRS has published information on unpaid refunds. *Unclaimed Refunds*. Some taxpayers may have had taxes withheld from their wages but were not required to file a tax return because they had too little income. Others may not have had any tax withheld but would be eligible for the refundable Earned Income Tax Credit. To collect this money a return must be filed with the IRS no later than three years from the due date of the return. If no return is filed to claim the refund within three years, the money becomes the property of the U.S. Treasury. There is no penalty assessed by the IRS for filing a late return qualifying for a refund. Current and prior year tax forms and instructions are available on the Forms and Publications page of IRS.gov or by calling 800-829-3676. Information about the Earned Income Tax Credit and how to claim it is also available on IRS.gov. *Undeliverable Refunds*. Refund checks are mailed to a taxpayer's last known address. Checks are returned to the IRS if a taxpayer moves without notifying the IRS or the U.S. Postal Service. Taxpayers may be able to update their address with the IRS on the "Where's My Refund?" feature available on IRS.gov. Taxpayers will be prompted to provide an updated address if there is an undeliverable check outstanding within the last 12 months. Taxpayers can also ensure the IRS has their correct address by filing Form 8822, Change of Address, which is available on IRS.gov or can be ordered by calling 800-829-3676. If a taxpayer does not have access to the internet and thinks he or she may be missing a refund, the taxpayer should first check records or contact the tax preparer. If the refund information appears correct, call the IRS toll-free assistance line at 800-829-1040 to check the status of the refund and confirm the taxpayer's address. **IRS summertime Tax Tip 2010-13**.

RETURNS. The IRS has issued a Field Attorney Advice letter concerning the imposition of the I.R.C. § 6702 penalty for frivolous business tax returns. The IRS ruled that, where a frivolous return has been filed, the penalty should be assessed against the entity only and should not be assessed against a business entity and the person responsible for the frivolous return unless the responsible person filed the return without authorization from the entity. The IRS indicated that this result applied to partnerships, S corporations and C corporations. **FAA 20102901F, July 27, 2010**.

S CORPORATIONS

SHAREHOLDER BASIS. The court upheld the IRS disallowance of carry-through losses from an S corporation because the sole shareholder failed to provide any credible evidence of the taxpayer's basis in the taxpayer's interest in the corporation. **Bream v. Comm'r, T.C. Summary Op. 2010-110**.

TRUSTS. The taxpayers created an irrevocable trust for their child which was supposed to qualify as a charitable remainder unitrust (CRUT). However, the trust was originally written as a net income charitable remainder trust (NICRUT) and some of these provisions were erroneously retained in the final version of the trust document by the drafting attorney, making the trust unqualified as a CRUT. The taxpayers obtained a court order amending the trust by removing the NICRUT provisions. The IRS ruled that the reformation of the trust did not violate I.R.C. § 664 and the reformed trust was a qualified CRUT. **Ltr. Rul. 201030015, Feb. 2, 2010**.